

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Marcelo A. Herrera,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20090342-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services, Workforce Appeals	)	(March 11, 2010)
Board,	)	
	)	2010 UT App 57
Respondent.	)	

-----

Original Proceeding in this Court

Attorneys: Marcelo A. Herrera, Las Vegas, Nevada, Petitioner Pro Se  
Suzan Pixton, Salt Lake City, for Respondent

-----

Before Judges McHugh, Thorne, and Voros.

VOROS, Judge:

Petitioner Marcelo A. Herrera challenges a decision of the Workforce Appeals Board (the Board). The Board assessed repayment and a statutory penalty against Herrera for fraudulently obtaining unemployment benefits for three weeks that he in fact worked. Herrera disputes the finding of fraud on the ground that any misrepresentation he made was unintentional. We affirm.

We will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). Moreover, "we will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality." Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

A claimant for unemployment benefits is ineligible to receive benefits for any week with respect to which the claimant "willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit" under the Employment Security Act. Utah Code Ann. § 35A-4-405(5)(a) (Supp. 2009). A claimant who files for unemployment benefits based on

false information and thus receives benefits to which the claimant is not entitled must repay any amounts received. See id. § 35A-4-405(5)(a), (c). In addition, the claimant must pay, as a civil penalty, an amount equal to the amounts received. See id. § 35A-4-405(5)(c). Upon a finding of fraud, the Board has no discretion to reduce or waive the statutory penalty. See id.; see also Diprizio v. Industrial Comm'n, 572 P.2d 679, 680-81 (Utah 1977) (stating that neither the fact finder nor reviewing court has discretion to modify any part of the statutory penalty).

Under rules governing the Department of Workforce Services (the Department), "[f]raud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits." Utah Admin. Code R994-406-401(2). To establish fraud, the Department must establish materiality, knowledge, and willfulness. See id. R994-406-401(1). Materiality is established when a claimant makes a misrepresentation for the purpose of obtaining any benefit payment to which he or she is not entitled. See id. R994-406-401(1)(a)(i)(A). Knowledge is established when the claimant knew or should have known that the information submitted to the Department was incorrect or that the claimant failed to provide required information. See id. R994-406-401(1)(b). "A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report." Id. Finally, "[w]illfulness is established when a claimant files claims or other documents containing false statements, responses, or deliberate omissions." Id. R994-406-401(1)(c). Direct proof of intent to defraud is not required. See id. R994-406-401(3).

Here, the Board's finding of fraud was based on substantial evidence. Herrera was laid off January 5, 2008, filed his unemployment claim January 24, 2008, and resumed working January 29, 2008. Although he was then working, he applied for and received three weekly payments of \$320 for the weeks ending February 2, 9, and 16, 2008. When filing for each of those three weeks, Herrera answered "no" when asked, "during the week, did you work?" Because these statements were false and were made for the purpose of obtaining benefits for which Herrera was not eligible, they support findings of materiality and willfulness. Because Herrera knew or should have known that his statements were false, the statements also support a finding of knowledge.

Herrera argues that he filed his unemployment claim shortly after being laid off and that, to his knowledge, his benefits were to begin January 5, 2008. Thus, he argues that the three weekly payments he received were intended for the three weeks that he was in fact unemployed. "Fraud penalties do not apply if

the overpayment was the result of an inadvertent error." Id.  
R994-406-401(2). However, Herrera admitted that he had  
difficulty remembering dates related to this case. In contrast,  
the Department's records clearly show that he initially filed his  
claim January 24, 2008; that his last three filings were for the  
weeks ending February 2, 9, and 16, 2008; and that he stated that  
he had not worked those weeks.

On this record, we cannot say that the Board's findings are  
unsupported by substantial evidence or that its application of  
the law to the facts is unreasonable or irrational. Accordingly,  
the Board's decision is affirmed.

---

J. Frederic Voros Jr., Judge

-----

WE CONCUR:

---

Carolyn B. McHugh,  
Associate Presiding Judge

---

William A. Thorne Jr., Judge